



Appeal Decision

Site visit made on 20 January 2022

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st February 2022

Appeal Ref: APP/R1845/X/21/3283420

Wyre Mill Cottage, Mill Lane, Wolverley, Worcestershire DY11 5TR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development.
 - The appeal is made by Mr Tim Partridge against Wyre Forest District Council.
 - The application ref 21/0721/CLP is dated 20 July 2021.
 - The application was made under section 192(1)(a) and 192(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The use and development for which a certificate of lawful use or development is sought is the siting of beehives (building or enclosure) for the keeping of bees, surrounded by a new fence of less than two metres high and siting of a caravan.
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Decision

1. The appeal is allowed and attached to this decision is an LDC certificate describing the proposed use and operations which are found to be lawful.

Applications for costs

2. An application for costs was made by Mr Tim Partridge against Wyre Forest District Council. This application will be the subject of a separate Decision.

Preliminary Matters

3. Section 192(2) of the Act indicates that if, on an application under that section, the Council is provided with information satisfying it that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application.
4. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.
5. Although neither the application or appeal form clarify the proposed use of the caravan, the appellant's submissions confirm that the caravan would be stored on the land and occasionally used by family and that no services would be connected.

Main Issue

6. Since the Council has not determined the application, the appeal is against its deemed refusal. Therefore, the main issue is whether that deemed refusal would have been well-founded. The decision turns on whether the proposed

development would result in a material change of use of the land and thus constitute development, and whether the operational development would be works not permitted under Article 3 and Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).

Reasons

7. Wyre Mill Cottage benefits from land which extends to the rear and side of the house mostly laid to lawn and wildflower meadow with hedgerows, trees and ornamental flower beds. The garden contains a green house, garden house, gazebo and oil tank. The whole of the land is within the appellant's ownership and is enclosed by mainly post and rail fencing. The eastern boundary is defined by the mill chase and within the site running north to south is a public right of way (PRoW). The PRoW, which cuts through the appellant's garden, is bounded on one side by a hedge and fence. A gate provides access between the two areas. The Council consider this boundary to demarcate the extent of the curtilage of the dwellinghouse, whereas the appellant provides that the hedge and fence are necessary to keep those using the PRoW from straying onto his land. The development would be sited on an area of the land either side of the hedge and fence.
8. The Council's view is that the land to the east of the hedge and fence has not been proven to represent part of the lawful domestic curtilage of the appeal property. Therefore, the siting of a caravan on the land to provide incidental accommodation to the property would represent a material change of use of the land which does not constitute permitted development. Furthermore, the proposed beehive "structures" and "associated compound enclosure" are also considered to be on land outside of the lawful domestic curtilage. In the Council's opinion the development proposed would not benefit from permitted development rights by virtue of Class E of the GPDO.

The siting of a caravan

9. Class E (a) of the GPDO is concerned with the provision of buildings or enclosures and swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse. The stationing of a caravan on land is generally held to be a use of land.
10. While the meaning of 'use' is provided in s336(1) of the Act, the concept of a material change of use is not defined in statute or statutory instrument. The basic approach is that, for a material change of use to occur, there must be some definable change in the character of the activities from what has gone on previously to what is proposed, as a matter of fact and degree.
11. The starting point when considering whether the use of the land, for the siting of a caravan for uses specified by the LDC application, is lawful should be the identification of the planning unit and its primary use. If the use of the planning unit does not change as a result of the development proposed and it remains a single planning unit, a material change in the use of the land is unlikely to occur. Whether or not the siting of the caravan falls outside that which could be considered the residential curtilage is of no consequence.
12. In my judgement and from my site observations, the whole of the appellant's landholding is associated with the residential use of the land. The use of the

caravan would be part and parcel of that primary residential use being sited for the occasional use by family. No new planning unit would be created, and the character of the residential use of the existing single planning unit would not change. The proposal would not therefore amount to development as defined in s55(1) of the Act for which planning permission is required.

Siting of beehives surrounded by a fence of less than two metres high

13. The Council considers that the proposed beehives and associated enclosure do not fall within the scope of Class E of Part 1, Schedule 2 of the GPDO as the land in question does not constitute part of the lawful domestic curtilage of Wyre Mill Cottage. Furthermore, it is considered that the proposed fence, which would enclose the beehives, must be considered against the same Class of the GPDO which allows for the construction of enclosures and not the criteria as defined in Class A of Part 2, Schedule 2 of the GPDO. Consequently, it is the Council's view that the proposal falls foul of the fundamental criteria of Class E as the land does not constitute part of the lawful domestic curtilage of the dwelling.
14. The term 'building operations' is defined for the purposes of the 1990 Act in s55(1A) as including (a) demolition, (b) rebuilding, (c) structural alterations of or additions to buildings, and (d) other operations normally carried on by a person in business as a builder. The list is not exhaustive. S55(1) and (1A) should be read with regard to s336(1) of the Act which defines a 'building' as including any structure or erection and any part of a building, but not plant or machinery comprised within a building.
15. Established case law¹ as referred to by the appellant, identified three primary factors as being relevant to the question of what was a "building". These are: (a) size - a building would normally be something which was constructed on site as opposed to being brought already made to the site; (b) permanence - has the structure been moved? Is it capable of being moved and, if so, how? Is it intended to be moved in practice? How long has it been, or will it be in one position? It should be noted that 'permanence' does not necessarily mean 'forever or indefinitely'. (c) physical attachment - how it is it fixed to the ground? Does it need to be fixed, or will it rest by its own weight? Is it mounted on a permanent base? Is it attached to services? Has the placing of the building resulted in any physical change in the characteristics of the land?
16. The appellant's statement describes the beehives as "sitting on stands similar to a trestle table. Neither the stand nor the beehive is fixed into the ground. The stand and beehive can be moved by hand and are routinely moved from place to place. They can be purchased flat pack and assembled on the kitchen table to be carried to wherever they are to be left for the summer. The upper parts of a beehive (the Supers) are removed at the end of the summer and returned as weather improves after Spring. They are a standard dimension which bees find attractive of 50cm x 50cm and up to 100cm in height above the stand which can be anything from 30cm to 50cm above the ground."
17. As a matter of fact and degree, the beehives as described would have neither the permanence or physical attachment nor would they be of a size that would suggest they are a building. It follows that the beehives as proposed would not

¹ Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd [1949] 1QB 385, endorsed by the Court of Appeal in Skerritts of Nottingham Ltd v SSETR (No.2) [2000] 2 PLR 102

be development and would therefore not require express planning permission for their siting.

18. The appellant proposes to enclose the beehives with a fence that would be no more than 2 metres in height. The Council considers this to be development under Class E of the GPDO because it “clearly relates to an enclosure around the proposed beehives” and that the Class “allows for the construction of enclosures”. I believe this approach to be misconceived and do not consider the erection of a fence which encloses something to be permitted under Class E.
19. Article 3 and Schedule 2, Part 2, Class A of the GPDO concerns *the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure*. This is subject to the limitation within Schedule 2 where development would not be permitted if the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level. As the proposed fence would be below 2 metres in height, the fence would be development permitted by Article 3(1) of the GPDO.

Other Matters

20. Section 257 of the Act empowers a local planning authority to authorise the stopping up or diversion of any footpath, bridleway or restricted byway, if satisfied that it is necessary to do so in order to enable development to be carried out in accordance with a planning permission granted under Part III of the Act, which includes works classed as “permitted development”², or to enable development to be carried out by a government department.
21. The grant of planning permission does not of itself authorise any obstruction of a right of way. Any stopping up or diversion must be necessary in order to enable the development to be carried out. It is not enough that it is desirable, for example, because it would make the implementation of the planning permission more convenient. Alternative proposals may be put forward which might make the stopping up or diversion unnecessary.

Conclusion

22. On the evidence available, I consider that the appeal proposal does not involve the formation of an additional planning unit separate from that comprising the main property and its curtilage, and that the appeal application proposal would not amount to a material change of use. I conclude that the Council’s deemed refusal to grant an LDC in respect of the siting of beehives surrounded by a new fence of less than two metres high, and the siting of a caravan for occasional use by family members was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

S A Hanson

INSPECTOR

² Development that is granted planning permission by development order, normally the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or a local development order.

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 20 July 2021 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The siting of beehives for the keeping of bees, surrounded by a new fence of less than two metres high and siting of a caravan (for occasional use by family members) within land at Wyre Mill Cottage, Mill Lane, Wolverley, Worcestershire DY11 5TR would be part and parcel of the residential use, within the same planning unit and would not constitute development requiring planning permission.

Signed

S A Hanson

Inspector

Date: 21st February 2022

Reference: APP/R1845/X/21/3283420

First Schedule

The siting of beehives for the keeping of bees, surrounded by a new fence of less than two metres high and siting of a caravan (for occasional use by family members)

Second Schedule

Land at Wyre Mill Cottage, Mill Lane, Wolverley, Worcestershire DY11 5TR

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use and operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use and operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use and operations which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: []

by S A Hanson BA(Hons) BTP MRTPI

Land at: Wyre Mill Cottage, Mill Lane, Wolverley, DY11 5TR

Reference: APP/R1845/X/21/3283420

Scale: Not to Scale

